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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/665,036      | 09/19/2000  | Nebojsa Ilic         | 13297/00002         | 5475             |

7590 06/03/2003

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[REDACTED] EXAMINER

PATTEN, PATRICIA A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1654     |              |

DATE MAILED: 06/03/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

|   |                             |                  |
|---|-----------------------------|------------------|
| <b>Office Action Summary</b>  | Application No.             | Applicant(s)     |
|   | 09/665,036                  | Illic et al.     |
|   | Examiner<br>Patricia Patten | Art Unit<br>1654 |
|    |                             |                  |
| <i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>  |                             |                  |
| <b>Period for Reply</b>   |                             |                  |
| A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  |                             |                  |
| - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.   |                             |                  |
| - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  |                             |                  |
| - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  |                             |                  |
| - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).   |                             |                  |
| - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).   |                             |                  |
| <b>Status</b>   |                             |                  |
| 1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>May 16, 2003</u>  |                             |                  |
| 2a) <input type="checkbox"/> This action is FINAL.      2b) <input checked="" type="checkbox"/> This action is non-final.   |                             |                  |
| 3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.   |                             |                  |
| <b>Disposition of Claims</b>  |                             |                  |
| 4) <input checked="" type="checkbox"/> Claim(s) <u>5-10, 19-23, 34, 35, and 37-39</u> is/are pending in the application.  |                             |                  |
| 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.   |                             |                  |
| 5) <input type="checkbox"/> Claim(s) _____ is/are allowed.  |                             |                  |
| 6) <input type="checkbox"/> Claim(s) _____ is/are rejected.   |                             |                  |
| 7) <input type="checkbox"/> Claim(s) _____ is/are objected to.  |                             |                  |
| 8) <input checked="" type="checkbox"/> Claims <u>5-10, 19-23, 34, 35, and 37-39</u> are subject to restriction and/or election requirement.   |                             |                  |
| <b>Application Papers</b>   |                             |                  |
| 9) <input type="checkbox"/> The specification is objected to by the Examiner.   |                             |                  |
| 10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.<br>Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).   |                             |                  |
| 11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner.<br>If approved, corrected drawings are required in reply to this Office action.   |                             |                  |
| 12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.  |                             |                  |
| <b>Priority under 35 U.S.C. §§ 119 and 120</b>  |                             |                  |
| 13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).   |                             |                  |
| a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:<br>1. <input type="checkbox"/> Certified copies of the priority documents have been received.<br>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.<br>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). |                             |                  |
| *See the attached detailed Office action for a list of the certified copies not received.   |                             |                  |
| 14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).   |                             |                  |
| a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.  |                             |                  |
| 15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  |                             |                  |
| <b>Attachment(s)</b>  |                             |                  |
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  |                             |                  |
| 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |                             |                  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  |                             |                  |
| 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)   |                             |                  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____   |                             |                  |
| 6) <input type="checkbox"/> Other: _____  |                             |                  |

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### DETAILED ACTION

The after final amendment filed 5/16/03 has been entered. **The finality of the Office Action dated 12/02/02 has been withdrawn.** It was communicated to the Examiner via the Attorney, that Applicant was unaware that all of the species of the claims had not been examined. Although while searching a Markush group, the Examiner often stops searching when a species has been found in the prior art (as is the present case), the Examiner will reopen this case and search another species of the Applicants' choice. The After final amendment received 4/21/03 will not be entered because Applicants have amended the claims in the Instant amendment to reflect changes to claims made prior to the After final amendment received 4/21/03. Further, in light of a telephone conversation between the Examiner and Attorney Andrew Lawrence on 5/19/03, the Attorney agreed that it is the most recent amendment which Applicant would like entered.

Upon further consideration, it is the opinion of the Examiner that the Instant claims are properly restriktable:

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***Election/Restriction***

This application contains claims directed to the following patentably distinct species of the claimed invention: apple, tomato, grape, pear, plum and avocado.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 5-10, 19-23 and 37-39 are generic.

\*Please also note that although Applicants have amended claim 1 to recite a limited number of species, there remain dependant claims which recite the genus of plants.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

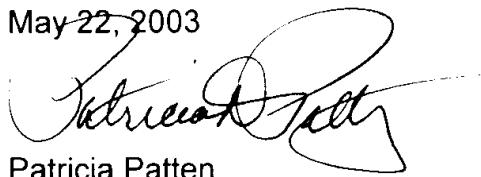
Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Patricia Patten, whose telephone number is (703)308-1189. The examiner can normally be reached on M-F from 9am to 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Brenda Brumback is on 703-306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

May 22, 2003

A handwritten signature in black ink, appearing to read "Patricia Patten".

Patricia Patten